Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

October Term, 1974

No. 74-1390

TOWN OF LOCKPORT, NEW YORK, and FLOYD SNYDER, Individually and as Supervisor of the Town of Lockport,
Appellants,

vs.

CITIZENS FOR COMMUNITY ACTION AT THE LOCAL LEVEL, INC. and FRANCIS W. SHEDD, Individually and on Behalf of All Others Similarly Situated,
Appellees,

and

JOHN J. GHEZZI, Secretary of State of the State of New York, ARTHUR LEVITT, Comptroller of the State of New York, LAVERNE S. GRAF, Clerk of the County Legislature, County of Niagara, New York and KENNETH COMERFORD, County Clerk, County of Niagara, New York,
Appellees.

APPEAL FROM A THREE JUDGE COURT OF THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK.

BRIEF OF APPELLEES, CITIZENS FOR COMMUNITY ACTION AT THE LOCAL LEVEL, INC. and FRANCIS W. SHEDD, Individually and on Behalf of All Others Similarly Situated ON THE QUESTION OF MOOTNESS

WELLES V. MOOT,
and
JOHN J. PHELAN,
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Buffalo, New York,
for
MOOT, SPRAGUE, MARCY, LANDY, FERNBACH & SMYTHE,
Buffalo, New York,
Attorneys for Appellees, Citizens for Community Action at the Local Level, Inc. and Francis W. Shedd, Individually and on Behalf of All Others Similarly Situated.

BATAVIA TIMES, APPELLATE COURT PRINTERS
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JOHN J. GHEZZI, Secretary of State of the State of New York, ARTHUR LEVITT, Comptroller of the State of New York, LaVERNE S. GRAF, Clerk of the County Legislature, County of Niagara, New York and KENNETH COMERFORD, County Clerk, County of Niagara, New York,

Appellees.

Statement.

Appellees, Citizens for Community Action at the Local Level, Inc. and Francis W. Shedd (hereinafter referred at as

appellee Call), the successful plaintiffs in the District Court, declare that mootness is not an issue upon this appeal and advise this Court that, as representatives of the class of aggrieved voters in this action, they are enforcing the injunction of the District Court to implement the 1972 Niagara County Charter.

I

The process of implementation of the 1972 Niagara County Charter.

The appellee Kenneth Comerford, the County Clerk of Niagara County, is required to initiate the implementation of the 1972 County Charter by certifying to the Niagara County Board of Elections, the county offices to be placed on the ballot within three months of the 1975 general election, pursuant to § 67 of the New York Election Law. *17 McKinney's Cons. Laws of New York, Election Law § 67* (added 1949) (Appendix A herein). The appellee Call has advised Mr. Comerford that he must implement the 1972 County Charter in accordance with the injunction granted by the District Court. The appellee Call has further advised appellee Comerford that if he does not specifically comply with the judgment of the District Court, appellee Call will take appropriate steps in the District Court immediately to enforce the judgment. The letter to appellee Commerford is contained herein as Appendix B.

II

How the question of mootness was introduced into this case.

This action arose out of a referendum in Niagara County, New York in the 1972 general election.

While the action was pending and undetermined, a second charter referendum was held in the 1974 general election. The result of the referendum was the same as 1972; a majority of the voters of Niagara County, who voted upon the proposition, approved the proposition. The voters in the area outside the three cities of Niagara County disapproved the County charter.

The judgment in the action declaring Article 9 § 1(h)(1) of the New York Constitution in violation of the Fourteenth Amendment and enjoining the implementation of the 1972 County Charter was granted on January 9, 1975. On February 19, 1975, the Attorney General of the State of New York made a public statement that he would not appeal the judgment of the District Court.

On February 26, 1975, the Secretary of State of the State of New York received and filed the 1972 County Charter as he was enjoined and directed by the Court below. On the same date, he received and filed the 1974 County Charter.

On March 5, 1975, the District Court granted the motion to intervene of the Town of Lockport, New York and Floyd Snyder, individually and as Supervisor. On March 6, 1975, the intervenor appellant filed a notice of appeal to this Court.

The Niagara County Attorney thereafter advised the District Court that his clients, which included the appellee Kenneth Comerford, would implement the 1974 County Charter without seeking a further order from the District Court. The Niagara County appellees, throughout this suit, have opposed a declaration of unconstitutionality of Article 9 § 1(h)(1) of the New York Constitution. They would achieve their limited interest by obtaining a County Charter form of government, without the declaration of the voters' constitutional right of equal suffrage which the appellee Call has sought in this action.

The Niagara County appellees, according to the County Attorney, prefer to implement the 1974 County Charter, which was drafted as a successor to the 1972 County Charter and granted the Niagara County Executive additional powers.

The attorney for the intervenor appellant Town of Lockport immediately seized upon the representation by the Niagara County Attorney as a means of obtaining an advantage in his efforts to overturn the judgment of the District Court so that the only charter with which he would have to contend would be the 1974 County Charter. He moved to vacate the judgment of the Court below on the ground of mootness which motion was denied by the District Court on June 11, 1975.

The Niagara County Attorney, upon the assumption that a defense of mootness would limit the constitutional effect of the decision of the District Court, raised the issue of mootness in his "Reply to the Jurisdictional Statement" and precipitated the inquiry from this Court, which the appellee Call now addresses.

On June 27, 1975, the intervenor appellant Town of Lockport, in its latest application for judicial relief, commenced a special proceeding in the Supreme Court of the State of New York pursuant to Article 78, *7B McKinney's Cons. Laws of New York, CPLR, Article 78, Proceeding Against Body or Officer (Added 1962)*, to revoke and rescind the certification of the 1974 Niagara County Charter by the New York Secretary of State on the ground that such charter has not been adopted and approved in accordance with the New York Constitution or the New York Municipal Home Rule Law. This proceeding is returnable July 22, 1975.

The decision of the New York Secretary of State, who undertook to receive and file the 1974 County Charter applying the decision of the District Court in this case and, we assume,

the decisional law in this Court interpreting the Equal Protection clause of the Fourteenth Amendment of the U.S. Constitution, would appear to raise a significant issue of law. The petition in the Article 78 proceeding in the Supreme Court of the State of New York to void the certification of the 1974 County Charter is annexed hereto and designated Appendix C.

III

Furthermore, this case is not moot because the provision of the New York Constitution, Article 9 § 1(h)(1) which violates the guarantee of equal suffrage contained in the equal protection clause of the Fourteenth Amendment remains in force and effect.

The "capable of repetition yet evading review" rule of this Court is clearly appropriate in this case. *Southern Pacific Terminal Co. vs. Interstate Commerce Commission*, 219 U.S. 498, 31 S.Ct. 279 (1911); *Moore vs. Ogilvie*, 394 U.S. 814, 89 S.Ct. 1493 (1969); *Super Tire Engineering Co. vs. McCorkle*, 416 U.S. 115, 94 S. Ct. 1694 (1974).

Conclusion.

The aggrieved voters of Niagara County who initiated this action to enforce their constitutional right of equal suffrage will vigilantly enforce the rights that have been defined in the District Court on behalf of the class of voters they represent. The justiciable issue in this case, the right of a majority of the voters of Niagara County to the County Charter form of local government approved in 1972, is being currently implemented. There is no question of mootness for this Court to consider.

Respectfully submitted,

WELLES V. MOOT, ESQ.,
and
JOHN J. PHELAN, ESQ.,
Attorneys for Appellees,
Citizens for Community Action at the Local Level, Inc. and Francis W. Shedd, Individually and on Behalf of All Others Similarly Situated.

July, 1975.

APPENDIX A.

Section 67, Election Law of the State of New York.

§ 67. *Certificates by Secretary of State and City, Village and Town Clerks as to offices to be filled at General or Special Election.*

The Secretary of State shall, at least three months before each general election make and transmit to the board of elections of each county, and of the city of New York, a certificate stating each officer, except county, city, village and town officers, and including senators and members of assembly who lawfully may be voted for at such election by the voters of the county or of such city, or any part thereof. Each county, city, village and town clerk shall within the same time make and transmit to the board of elections a certificate stating each county, city, village or town officer, respectively, not including senators or members of assembly, to be voted for at such election. If any such officer is to be elected to fill a vacancy, the certificate shall so state. The Secretary of State shall forthwith, upon the filing in his office of the governor's proclamation ordering a special election, make and transmit to the board of elections in each county in which the special election is to be held, a notice of such proclamation and a like certificate of the officers to be voted for at such special election. L.1949, c. 100, eff. March 9, 1949.

APPENDIX B.

Letter of appellee CALL to appellee Niagara County Clerk Comerford.

MOOT, SPRAGUE, MARCY, LANDY,
FERNBACH & SMYTHE
Attorneys at Law

July 2, 1975

The Honorable Kenneth Comerford
County Clerk, Niagara County
Niagara County Courthouse
Lockport, New York 14094

Re: Citizens for Community Action at the Local Level, Inc. and F. Shedd vs. John J. Ghezzi, *et. al.* and Floyd Snyder; Civil No. 1973-222
Our File No. 73-233-2

Dear Sir:

This letter is intended to advise you concerning the position of the appellees CALL and Shedd in the above entitled action which is on appeal to the Supreme Court of the United States.

The judgment of the three-judge United States District Court in the above entitled action granted on January 9, 1975 enjoins and directs you to implement the County Charter which was the subject of a referendum in Niagara County in the general election of 1972.

§67 of the Election Law of the State of New York requires you to certify to the Niagara County Board of Elections the county offices to be filled in the 1975 general election within three months of the date of the general election.

The application of the aforesaid injunction to your responsibility pursuant to such section of the Election Law requires

that you certify to the Niagara County Board of Elections, on or prior to August 1, 1975, that the office of Niagara County Executive is to be filled in the 1975 general election; pursuant to the 1972 County Charter for the County of Niagara, which a duly empowered U. S. District Court has directed and enjoined, shall be implemented as the instrument of local government for Niagara County.

An unusual occurrence has taken place concerning the appropriate governing instrument for Niagara County since the granting of such judgment, *i.e.*, the certification by the Secretary of State of the State of New York of the County Charter which was the subject of a referendum in the general election of 1974 as well as the certification of the 1972 County Charter.

Thereafter, the County Attorney of Niagara County undertook to speak for the Niagara County defendants and to advise the Honorable John T. Curtin U. S. D. J., one of the members of the three-judge U. S. District Court that the 1974 County Charter will be implemented and not the 1972 County Charter. We have no knowledge whether the Niagara County attorney, who has represented you throughout this suit, has express authorization from you to make this statement.

Therefore, we advise you that you are directed and enjoined by the judgment of the three-judge U. S. District Court to implement the 1972 County Charter unless you receive express authorization from said court to implement the 1974 County Charter as a successor instrument of local government for Niagara County.

In the event that you elect to certify to the Niagara County Board of Elections that the office of Niagara County

Appendix B—Letter of appellee CALL to appellee Niagara County Clerk Comerford.

Executive is to be filled pursuant to the County Charter other than the one expressly authorized by the three-judge U. S. District Court, we will immediately request that the court enforce the injunctive provisions of the judgment granted January 9, 1975.

We are prepared to discuss this subject with you at your convenience, for the regularity and legality of the performance of your duty of office in this instance, specifically your duty pursuant to §67 of the New York Election Law, are of significant public interest.

Sincerely,

JOHN J. PHELAN,
John J. Phelan.

JJP:mm

APPENDIX C.

Petition in Article 78 Proceeding in Supreme Court of the State of New York by Intervenor Appellant Town of Lockport, to Void Certification of 1974 County Charter.

STATE OF NEW YORK
SUPREME COURT—County of Niagara

In the Matter
of

TOWN OF LOCKPORT, New York, and FLOYD SNYDER, Individually and as Supervisor of the Town of Lockport, New York,

Petitioners,

vs.

MARIO M. CUOMO, Secretary of State of the State of New York, ARTHUR LEVITT, Comptroller of the State of New York, LA VERNE S. GRAF, Clerk of the County Legislature, County of Niagara, New York, and KENNETH COMERFORD, County Clerk, County of Niagara, New York, for judgment under CPLR Article 78,

Respondents.

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Petitioners, by their attorneys, Hodgson, Russ, Andrews, Woods & Goodyear, and Andrews, Pusateri, Brandt, Shoemaker, Higgins & Roberson, complaining of the respondents, allege:

1. The petitioner, Town of Lockport, New York, is, and at all of the times hereinafter mentioned was, a Town of the

State of New York, and the County of Niagara, organized and existing pursuant to the laws of the State of New York.

2. Petitioner Floyd Snyder is, and at all of the times hereinafter mentioned was, a resident of the Town of Lockport, County of Niagara, State of New York, and the duly elected supervisor of the Town of Lockport.

3. Mario M. Cuomo is the duly appointed, qualified, and acting Secretary of State of the State of New York; the said respondent is sued in his official capacity.

4. Respondent Arthur Levitt is the duly elected, qualified, and acting Comptroller of the State of New York; the said respondent is sued in his official capacity.

5. Respondent LaVerne S. Graf is the duly elected, qualified, and acting Clerk of the County Legislature for the County of Niagara, State of New York; the said respondent is sued in his official capacity.

6. Respondent Kenneth Comerford is the duly elected, qualified, and acting Clerk for the County of Niagara, State of New York; the said respondent is sued in his official capacity.

7. Article IX, Section 1(h)(1), of the Constitution of the State of New York, provides as follows:

> "§ 1. BILL OF RIGHTS FOR LOCAL GOVERNMENTS
>
> "Effective local self-government and intergovernmental cooperation are purposes of the people of the state. In furtherance thereof, local governments shall have the following rights, powers, privileges and immunities in addition to those granted by other provisions of this constitution:
>
> • • •
>
> "(h)(1) Counties, other than those wholly included within a city, shall be empowered by general law, or by special law enacted upon county requests pursuant to section two of this article, to adopt, amend or repeal alternative forms of county government provided by the legislature or to prepare, adopt, amend or repeal alternative forms of their own. Any such form of government or any amendment thereof, by act of the legislature or by local law, may transfer one or more functions or duties of the county or of the cities, towns, villages, districts or other units of government wholly contained in such county to each other or when authorized by the legislature to the state, or may abolish one or more offices, departments, agencies or units of government provided, however, that no such form or amendment, except as provided in paragraph (2) of this subdivision, shall become effective unless approved on a referendum by a majority of the votes cast thereon in the area of the county outside of cities, and in the cities of the county, if any, considered as one unit. Where an alternative form of county government or any amendment thereof, by act of the legislature or by local law, provides for the transfer of any function or duty to or from any village or the abolition of any office, department, agency or unit of government of a village wholly contained in such county, such form or amendment shall not become effective unless it shall also be approved on the referen-

dum by a majority of the votes cast thereon in all of the villages so affected considered as one unit."

8. Section 33(7), of the Municipal Home Rule Law of the State of New York, provides as follows:

"§ 33. POWER TO ADOPT, AMEND AND REPEAL COUNTY CHARTERS

"7. A charter law

"(a) providing a county charter, or

"(b) proposing an amendment or repeal of one or more provisions thereof which would have the effect of transferring a function or duty of the county, or of a city, town, village, district or other unit of local government wholly contained in the county, shall conform to and be subject to consideration by the board of supervisors in accordance with the provisions of this chapter generally applicable to the form of and action on proposed local laws by the board of supervisors. If a county charter, or a charter law as described in this subdivision, is adopted by the board of supervisors, it shall not become operative unless and until it is approved at a general election or at a special election, held in the county by receiving a majority of the total votes cast thereon (a) in the area of the county outside of cities and (b) in the area of the cities of the county, if any, considered as one unit, and if it provides for the transfer of any function or duty to or from any village or for the abolition of any office, department, agency or unit of government of a village wholly contained in the county, it shall not take effect unless it shall also receive a majority of all the votes cast thereon in all the villages so affected considered as one

unit. Such a county charter or charter law shall provide for its submission to the electors of the county at the next general election or at a special election, occurring not less than sixty days after the adoption thereof by the board of supervisors. Such a county charter or charter law may provide for the separate submission to the electors at such election of one or more variations of the provisions of such county charter. Any such variation may include, but shall not be limited to, proposed transfers of functions of local government to other units of local government or a class or classes thereof."

9. The aforementioned provisions of the New York State Constitution and of the New York State Municipal Home Rule Law are now, and at all times hereinafter mentioned were, in full force and effect as the law of the State of New York; the said provisions, together with ancillary provisions relating to required procedural conditions to the effectiveness of any local law of a county, governs methods and procedures required to be honored, satisfied and followed with respect to the proposed adoption, approval and effectiveness of a charter law providing for a county charter.

10. On or about August 20, 1974, the Niagara County Legislature adopted a resolution, constituting a proposed new Local Law, designated as Local Law No. 2, for the purpose of establishing a new county charter and a county charter form of government for the County of Niagara. A copy of the said Local No. 2 will be presented to the Court upon the hearing of this Petition, and is incorporated herein by reference.

11. The said Local Law No. 2, in accordance with the aforementioned constitutional and statutory provisions, pro-

vided by its terms that the adoption of the said Local Law No. 2 and of the proposed county charter contained therein, was subject to approval by referendum of the voters of the County of Niagara to be held on November 5, 1974.

12. On November 5, 1974, a referendum was held as required by the New York State Constitution and the Municipal Home Rule Law seeking approval of the said Local Law No. 2 and the proposed new county charter embodied therein by the voters of the County of Niagara.

13. The following votes were cast, tabulated and certified on the referendum of November 5, 1974 with respect to the following question: "Shall Local Law No. 2 of 1974 providing for a change in the present form of county government to a charter form of county government be approved?"

Votes cast in the cities within the County of Niagara	-	18,220 votes in favor, 14,914 votes against;
Votes cast in areas of the County outside of the cities of the County	-	10,665 votes in favor, 11,594 votes against.

14. Under the New York State constitutional and statutory provisions recited above, as in effect at the time of the said referendum on November 5, 1974, and as currently in effect, the proposed Local Law No. 2 containing the proposed new charter for the County of Niagara did not obtain the votes required for approval.

15. Section 27 of the Municipal Home Rule Law of the State of New York provides as follows:

"§ 27. FILING AND PUBLICATION OF LOCAL LAWS

"1. Within five days after a local law shall finally have been adopted, the clerk, or other officer designated by the legislative body, shall file one certified copy thereof in the office of such clerk except that in the case of a county it shall also be filed in the office of the county clerk, one certified copy in the office of the state comptroller and four certified copies in the office of the secretary of state, one of which copies said secretary of state shall forward to the office for local government. In the case of a local law subject to a referendum, however, such local law shall be filed within five days after its approval by the electors, or where the local law was subject to a permissive referendum and no petition was filed requesting the referendum, the local law shall be filed within five days after the time for filing of such petition shall have expired.

"2. Each such certified copy shall contain the text only of the local law without the brackets and without the matter within the brackets, the matter with a line run through it, or the italicizing or underscoring, if any, to indicate the changes made by it, and also have attached thereto a certificate executed by the corporation counsel, municipal attorney or other principal law officer to the effect that it contains the correct text and that all proper proceedings have been had or taken for the enactment of such local law, which certificate shall constitute presumptive evidence thereof, provided that any failure or omission so to certify shall not invalidate such local law.

"3. Notwithstanding the effective date of any local law, a local law shall not become effective before it is filed in the office of the secretary of state.

"4. Subject to the provisions of subdivision three hereof, every local law shall take effect on the twentieth day after it shall finally have been adopted unless a different time shall be prescribed therein or required by this chapter or other provision of law.

"5. Local laws shall be published annually by the secretary of state in a separate volume as a supplement to the session laws.

"6. The clerk shall record all local laws filed in his office in a separate book or books, which shall be indexed by him."

16. Upon information and belief, a certified copy of the proposed Local Law No. 2 was not filed in the office of the Clerk of the Niagara County Legislature within five days after the referendum on November 5, 1974.

17. Upon information and belief, a certified copy of the proposed Local Law No. 2 was not filed in the office of the Clerk of the County of Niagara within five days after November 5, 1974.

18. Upon information and belief, one certified copy of the proposed Local Law No. 2 was not filed in the office of the Comptroller of the State of New York within five days of November 5, 1974.

19. Upon information and belief, four certified copies of the proposed Local Law No. 2 were not filed in the office of the Secretary of State of the State of New York within five days of November 5, 1974.

20. Contrary to and in violation of the above provisions of the Constitution of the State of New York and of the Municipal Home Rule Law of the State of New York, and despite the failure of the proposed Local Law No. 2 embodying the proposed new charter for the County of Niagara to obtain the votes of the electors as required by the said constitutional and statutory provisions, upon information and belief, the respondent Clerk of the Niagara County Legislature, purported to file a certified copy of the said Local Law No. 2 with the County Legislature on or about February 28, 1975.

21. Contrary to and in violation of the above provisions of the Constitution of the State of New York and of the Municipal Home Rule Law of the State of New York, and despite the failure of the proposed Local Law No. 2 embodying the proposed new charter for the County of Niagara to obtain the votes of the electors as required by the said constitutional and statutory provisions, upon information and belief, the respondent Clerk of the County of Niagara, purported to file a certified copy of the said Local Law No. 2 in the office of the Clerk of the County of Niagara on or about February 28, 1975.

22. Contrary to and in violation of the above provisions of the Constitution of the State of New York and of the Municipal Home Rule Law of the State of New York, and despite the failure of the proposed Local Law No. 2 embodying the proposed new charter for the County of Niagara to obtain the votes of the electors as required by the said constitutional and statutory provisions, upon information and belief, the respondent Arthur Levitt, as Comptroller of the State of New York, purported to receive and to file a certified copy of the said Local Law No. 2 in the office of the Comptroller of the State of New York on or about February 28, 1975.

23. Contrary to and in violation of the above provisions of the Constitution of the State of New York and of the Municipal Home Rule Law of the State of New York, and despite the failure of the proposed Local Law No. 2 embodying the proposed new charter for the County of Niagara to obtain the votes of the electors as required by the said constitutional and statutory provisions, upon information and belief, the respondent Mario M. Cuomo, as Secretary of State of the State of New York, purported to receive and to file a certified copy of the said Local Law No. 2 in the office of the Secretary of State of the State of New York on or about February 28, 1975.

24. Upon information and belief, the respondents in this action and the Legislature of the County of Niagara are proceeding and purporting to proceed pursuant to and in accordance with the aforementioned Local Law No. 2, and specifically, have embarked upon procedures with respect to the holding of general elections in November 1975 for the election of a County Executive and a Commissioner of Finance purportedly created by the county charter embodied in the said Local Law No. 2, and with elections for Legislators as specified therein.

25. In acting in the manner and in the fashion described in this Petition, the respondents are acting and proceeding contrary to and in violation of the Constitution of the State of New York, Article IX, Section 1(h)(1), and the Municipal Home Rule Law of the State of New York, Section 33(7), as well as in violation of Section 27 of the Municipal Home Rule Law of the State of New York, and otherwise in violation of the law of the State of New York.

26. The petitioner Town of Lockport is aggrieved by the aforesaid actions inasmuch as: The voters of the Town of Lockport voted against approval or adoption of Local Law No. 2 and against approval of the proposed Niagara County charter in the aforementioned referendum of November 5, 1974, by a vote of 914 votes against, 838 votes in favor; and the said proposed new charter would have material effects upon the government and structure of government of the County of Niagara, of which the said Town of Lockport is a part, and upon the rights, privileges, and duties of the duly elected government of the Town of Lockport.

27. The petitioner Floyd Snyder is aggrieved inasmuch as: The said petitioner is and was a resident of the Town of Lockport and the County of Niagara; the said petitioner voted against the adoption of or approval of the aforementioned local law and the proposed Niagara County charter; the petitioner's rights as an individual voter are transgressed and violated by the actions of the respondents in refusing to comply with the Constitution of the State of New York and the laws of the State of New York duly enacted pursuant thereto, and by the actions of the respondents in purporting to certify the said Local Law No. 2 and the proposed Niagara County charter as duly adopted and as governing law in the County of Niagara.

28. At the time of execution and filing of this Petition, eleven (11) of the twelve (12) towns situated within the County of Niagara have formally adopted resolutions expressing support for the efforts of petitioners to prohibit enforcement of Local Law No. 2 contrary to the express requirements of the Constitution of the State of New York and the Municipal Home Rule Law, two (2) villages within

the County of Niagara have taken such formal action, and in addition, ninety-four (94) other towns and villages throughout the State of New York have taken similar formal action and communicated the same to Petitioners.

29. This proceeding is brought pursuant to CPLR Article 78.

30. The issues involved in this proceeding are of interest within the Niagara County community and to the voters of that community; the issues raised by this Petition relate to the enforcement of constitutional and statutory provisions, and to compliance with those provisions, of interest to all citizens and electors of the County of Niagara.

WHEREFORE, your petitioners respectfully ask for a judgment as follows:

1. Adjudging and declaring that the said 1974 Local Law No. 2 of Niagara County, including the proposed Niagara County charter, has not been adopted and approved in accordance with the applicable provisions of the New York State Constitution or of the Municipal Home Rule Law of the State of New York.

2. Directing the respondents to take such action as may be necessary to revoke and rescind the purported certification of Local Law No. 2, to refrain from taking any actions to certify or declare the said Local Law No. 2 and the proposed Niagara County charter as being properly adopted and approved, and to refrain from taking any actions in purported reliance thereon, with respect to general elections or otherwise.

3. For such other, further or different relief as may be just and proper in the premises.

TOWN OF LOCKPORT,
COUNTY OF NIAGARA,
By: Floyd Snyder,
Supervisor.

Floyd Snyder,
Individually.

Hodgson, Russ, Andrews,
Woods & Goodyear,
1800 One M & T Plaza,
Buffalo, New York 14203,

and

Andrews, Pusateri, Brandt, Shoemaker,
Higgins & Roberson,
500 Bewley Building,
Lockport, New York 14094,

Attorneys for Petitioners.

(Verified June 27, 1975.)